UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 10 Cr. 87 (DAB)

MEMORANDUM AND ORDER

LARRY SEABROOK,
Defendant.
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DEBORAH A. BATTS, United States District Judge.

On March 5, 2013, Defendant Larry Seabrook ("Seabrook" or "Defendant") filed a Motion for a New Trial and to Vacate his Conviction, brought pursuant to Rule 33(b)(1) of the Federal Rules of Criminal Procedure ("Rule 33"). Additionally, Defendant requests bail pending appeal pursuant to 18 U.S.C. § 3143(b).

For the reasons that follow, Defendant's Motion is DENIED.

I. BACKGROUND

A. Defendant's Conviction and Sentence

In February 2010, the Government indicted Defendant, charging him with thirteen Counts related to corruption, money laundering, fraud, conspiracy, and solicitation. The Government tried Defendant in a jury trial that began on November 7, 2011. Because the jury was unable to reach a verdict on all Counts, on December 9, 2011, the Court declared a mistrial.

In September 2011, the Government filed a Superseding Indictment, charging Defendant with twelve Counts related to corruption, money laundering, fraud, conspiracy, and

solicitation. On June 18, 2012, a retrial began. The Government presented extensive evidence during the trial, which this Court previously has described. (See Sept. 4, 2012 Order, ECF No. 99.) At primary issue in the instant Motion is the testimony of two of the Government's witnesses, Phelisha Jude ("Jude") and Tyrone Duren ("Duren").

Over two days of testimony, conducted on June 21, 2012 and June 25, 2012, Jude testified that she worked for the North East Bronx Redevelopment Corporation ("NEBRC"), as well as other non-profit organizations. (Tr. 259-60.) She worked with Seabrook in preparing budgets with him formulating all the information on the budgets. (Tr. 282-97.) Part of her role in the scheme included forging signatures.[1] (Tr. 341, 356, 362-63, 418-19.) Jude testified extensively regarding numerous documents she fraudulently created, including contracts, employment agreements, invoices, loans, and various purchases. (Tr. 301-432, 447-56.) She also testified that, pursuant to an agreement with the Government, if she gave truthful testimony regarding what occurred during her employment at the non-profits, she would not

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[1] Q: Whose signatures did you forge on checks and rent subleases?
A: Roger Withersppon, T. Mitch Duren. I had permission by Gloria to sign her name on subleases. I signed David Frazier, Mitch Duren, William Low, and then I have permission to sign Gloria Jones-Grant.
(Tr. 362-63.)

be prosecuted. (Tr. 264.)

Duren testified on July 3, 2012 and July 5, 2012, only after receiving a grant of immunity. (Tr. 1278.) He explained that he had various roles within organizations affiliated with Seabrook, including the NEBRC. (Tr. 1281-90.) At Defendant's direction, Duren would sign leases and time sheets as well as pre-sign checks for with blank payment terms. (Tr. 1300-05, 1311-12, 1324-47, 1365-71, 1407-09.) Duren also aided Defendant in preparing budgets and proposals for programs. (Tr. 1371-89.)

During the course of testimony, he explained that his ex-wife, Arlene Carden ("Carden"), worked for some of the organizations in question.[2] (Tr. 1295, 1350.) And, on cross-examination, Duren stated his only criminal act was inflating time sheets.[3] (Tr. 1418.)

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[2] Q: Mr. Duren, just in summary, what was NEBRC doing in connection with the FDNY program?
A: We actually developed fliers . . . . We placed those fliers at various entites in the city. . . . We actually had applicants come into the office and actually sign up for the actual fire initiative tutorial program . . . .
Q: Besides yourself, who else was working in the program?
A: That particular staff for that particular intiative was, again, Ms. Randolph, Keith Johnson, Arlene Carden, Gloria Jones, Philesha Jude.
(Tr. 1350.)

[3] Q: And that you would only be testifying unless you had that grant of immunity; isn't that correct?
A: Correct.
Mr. Jackson: Objection, Judge.

On July 17, 2012, after the close of the Government's evidence, Defendant moved for an acquittal pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure ("Rule 29(a)"), which was denied. On July 26, 2012, the jury acquitted Defendant of Counts One, Two, and Three; however, the jury found him guilty of Counts Four through Twelve. Defendant then filed a Motion for a New Trial and for a Judgment of Acquittal pursuant to Rules 29(c) and 33, which the Court denied on September 4, 2012. (Sept. 4, 2012 Order, ECF No. 99.)

Defendant was sentenced on January 8, 2013 to sixty months' imprisonment, running concurrently on Counts Four through Twelve, followed by two years' supervised release, also running concurrently on Counts Four through Twelve.

B. Defendant's Instant Motion

On March 5, 2013, Defendant filed the instant Motion, seeking a new trial pursuant to Rule 33(b) based on newly discovered evidence. Defendant also sought an Order to Show Cause, a stay of execution of his sentence, and a stay of his March 8, 2013 surrender date pursuant to 18 U.S.C. § 3143(b)(1).

After conducting a preliminary review of Defendant's submissions and applying the standards for granting a new trial

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The Court: Sustained. Don't answer. Move on. (Tr. 1417-18.)

pursuant to Rule 33(b), this Court found that Defendant's "chances for prevailing are highly improbable." (Mar. 7, 2013 Order, ECF No. 123.) Accordingly, this Court denied Defendant's requests for an Order to Show Cause and Stay of Surrender. After the March 7, 2013 Order, the Government filed an Opposition to Defendant's Motion, and Seabrook filed a Reply.

Defendant asserts his Motion should be granted because it has been newly discovered that Jude and Duren perjured themselves during Defendant's trial. He claims that Jude committed perjury when she did not, while listing whose signatures she forged, mention forging Carden's signature and that Duren perjured himself when he stated Carden worked for the NEBRC's Fire Diversity Program ("FDP").[4] Additionally, Defendant claims his Motion should be granted because the Government committed Brady violations when it did not produce notes and reports of interviews with Carden.

In his Reply, Defendant claims this Court should revisit its denial of its stay of execution of sentence because the denial failed to comport with the requirements of Rule 9(a) of the Federal Rules of Appellate Procedure ("Rule 9(a)").

[4] For purposes of this instant Motion, the Court will assume that Defendant, through the Affidavits of Oliver Seabrook and Donald Frangipani, demonstrated that Jude and Duren forged Carden's signature on various checks and time sheets.

II. DISCUSSION

A. Legal Standard for a Rule 33(b) Motion

Rule 33(b)(1) sets forth the timing for Defendant's Motion, explaining, "If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case." Fed. R. Crim. P. 33. "Accordingly, the district court retains jurisdiction to deny a Rule 33 motion during the pendency of an appeal, even though it may not grant such motion unless the Court of Appeals first remands the case to the district court." United States v. Camacho, 302 F.3d 35, 36 (2d Cir. 2002).

"[I]n order to warrant a new trial, a defendant must show at least a reasonable likelihood that the result of the proceeding would have been different had the newly discovered evidence, proof of perjury, or Brady material been introduced. United States v. Rommy, 486 Fed. App'x 172, 174 (2d Cir. 2012) (collecting cases). "For Rule 33 motions based on newly discovered evidence of perjury, the defendant must, among other things, pass two threshold inquiries—he must present some newly discovered evidence and must prove that 'the witness in fact committed perjury.'" United States v. Bourke, 488 Fed. App'x 528, 529 (2d Cir. 2012) (quoting United States v. Stewart, 433 F.3d 273, 297 (2d Cir. 2006)). A new trial pursuant to Rule 33 based on newly discovered evidence requires that

(1) the newly discovered evidence could not with due

> diligence have been discovered before or during trial; (2) the evidence demonstrates that the witness in fact committed perjury; (3) the newly discovered evidence is material; and (4) the newly discovered evidence is not cumulative.

United States v. Bourke, No. 05 Cr. 518, 2011 WL 6376711, at *7 (S.D.N.Y. Dec. 15, 2011) (citing United States v. White, 972 F.2d 16, 20-21 (2d Cir. 1992)); United States v. Canova, 412 F.3d 331, 349 (2d Cir. 2005). Such motions only should be granted in the "most extraordinary circumstances," United States v. Spencer, 4 F.3d 115, 188 (2d Cir. 1993), where "the evidence would probably lead to an acquittal." United States v. Alessi, 638 F.2d 466, 479 (2d Cir. 1980).

B. Jude's Alleged Perjured Testimony

Jude admitted to forging signatures on checks, contracts, and subleases by signing the names of Roger Witherspoon, Mitch Duren, Gloria Jones-Grant, David Fraizer, and William Low. (Tr. 362-63; Oliver Seabrook Aff. at 5.) Defendant alleges Jude committed perjury when she did not also state that she forged Arlene Carden's signature. (Oliver Seabrook Aff. at 5-6.)

Perjury does not include "[i]ncorrect testimony resulting from confusion, mistake, or faulty memory, or simple inaccuracies or inconsistencies." United States v. Schlesinger, 438 F. Supp. 2d 76, 106 (E.D.N.Y. 2006) (citing United States v. Monteleone, 257 F.3d 210, 219 (2d Cir. 2001)). Jude's failure to mention

forging Carden's signature when she committed so many admitted-to acts of forgery likely resulted from mistake, faulty memory, or inaccuracy. Defendant makes no showing, save his bald assertion of a fraudulent scheme between Jude and Duren, that Jude intentionally omitted mentioning her forgery of Carden's signature. Moreover, their alleged fraudulent scheme does not demonstrate an intentional omission, especially since Jude would not face prosecution for her fraudulent acts so long as she testified honestly about the events that occurred during her employment, which would have included the alleged scheme between Jude and Duren. (Tr. 264.)

Even if this were perjured testimony, it would merely be cumulative evidence of Jude's past acts of forgery and fraudulent conduct and thereby insufficient grounds for granting Defendant's Motion. Schlesinger, 438 F. Supp. 2d at 110; United States v. Gordils, 982 F.2d 64, 72 (2d Cir. 1992) ("[N]ew evidence was merely cumulative of other evidence of [the witness's] criminal history and past illegal conduct which was known by the defendants at the time of trial."). Moreover, even if Jude did not mention Carden to conceal her scheme with Duren, that scheme would bear on Jude's credibility, which is insufficient to obtain a new trial.[5] Schlesinger, 438 F. Supp. 2d at 110; United States

[5] Since there was ample independent evidence to support Defendant's guilty verdict, Jude's credibility "was . . . not an

v. Figueroa, 421 Fed. App'x 23, 24-25 (2d Cir. 2011) (holding evidence of professional misconduct was not grounds for a Rule 33 motion because it "would have done no more than impeach her credibility").

Assuming arguendo that Jude and Duren engaged in a separate fraudulent scheme, that does not change the fact that Jude provided evidence about Seabrook's fraudulent acts and conspiracy for which he was convicted. Additionally, the jury heard testimony from other witnesses, including Gloria Jones-Grant, Larry Scott Blackmon, and Jeremy Travis, and the Government produced other evidence of Defendant's guilt. (See Sept. 4, 2012 Order, ECF No. 99.) Accordingly, even if the jury was unaware of the alleged separate scheme and even if Jude committed perjury, there was "overwhelming evidence supporting" Defendant's conviction; therefore Defendant is not entitled to a new trial. Rommy, 486 Fed. App'x at 175; United States v. Vaval, 209 Fed. App'x 24, 25 (2d Cir. 2006) (explaining that even if perjury occurred it would not have altered the verdict); United States v. Bui, 70 Fed. App'x 14, 17 (2d Cir. 2003) (affirming a denial when the testimony was not material to the verdict and independent

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important issue in the case." Giglio v. United States, 405 U.S. 150, 154-55 (1972); Figueroa, 421 Fed. App'x at 24-25; United States v. Persico, 645 F.3d 85, 111 (2d Cir. 2011). Moreover, the Court specifically instructed the jury that, because Jude was a cooperator and an accomplice, her testimony should be scrutinized with greater care. (Tr. 2370-73.)

evidence adequately supported the conviction).

C. Duren's Alleged Perjured Testimony

Defendant claims Duren twice perjured himself. First, he alleges that on cross-examination Duren stated, "The only criminal act that I committed was inflating the time sheets." (Def.'s Mot. 8-9; Tr. 1417-18.) However, that statement was striken from the record because it was in response to a question objected to and sustained and Duren was instructed not to answer the question. Second, on direct examination, Duren testified that Carden worked in the NEBRC's FDP. (Def.'s Mot. 14.) According to Oliver Seabrook, Duren's perjury was immediately apparent and during trial he was able to search records to find three forged time sheets and to give them to Defendant's attorney the following day——the same day that Duren's cross-examination was to begin. (Seabrook Aff. at 2-3.)

Defendant claims the perjury was newly discovered because it was only after the trial that Oliver Seabrook discovered additional checks and time sheets, which demonstrate Carden never worked for the FDP. (Def.'s Mot. 7-8; Seabrook Aff. at 3-4.) Defendant also asserts the perjury was newly discovered because Oliver Seabrook turned over these documents to an investigator who, after the trial concluded, found that Duren and Jude forged Carden's signature thereby demonstrating that Duren committed

additional criminal acts and that the two engaged in a separate fraudulent scheme. (Def.'s Mot. 7-8; Frangipani Aff. at 1-3.)

i. Testimony About Carden Working for the FDP

As an initial matter, Defendant's Motion fails because he does not meet the threshold inquiry that there was newly discovered evidence. Oliver Seabrook discovered three time sheets during trial.[6] Moreover, Oliver Seabrook brought the alleged inaccuracy to Defendant's counsel's attention who decided not to cross-examine Duren regarding that inaccuracy. (Seabrook Aff. at 3; Tr. 1478-79.)

Duren also did not perjure himself regarding Carden's participation with the FDP.[7] Duren noted Carden worked as a job developer for some of organizations, without specifying which ones.[8] (Tr. 1295.) When discussing what the NEBRC was doing in connection with the FDP, he explained that besides himself, the "particular staff for that particular initiative was, again, Ms. Randolph, Keith Johnson, Arlene Carden, Gloria Jones, Philesha

[6] The additional checks, time sheets, employment registers and payment registers that were discovered by Oliver Seabrook are merely cumulative evidence of the three time sheets that could have been used during cross-examination.

[7] Even if he did perjure himself, as will be explained below, his perjury would be immaterial.

[8] It is undisputed that Carden worked for the NEBRC.

Jude." (Tr. 1350.) Based on this testimony, it is not clear that he testified that Arlene Carden worked for the FDP. Even if he did testify she worked for the FDP, that statement is not perjury but rather incorrect testimony stemming from confusion, mistake, or inaccuracy. Schlesinger, 438 F. Supp. 2d at 106; Monteleone, 257 F.3d at 219.

ii. Testimony About Duren's Criminal Acts

Allegations that Jude and Duren engaged in independent fraudulent acts also do not warrant a new trial. Even if the two engaged in their own fraudulent scheme, that does not negate the fact that the jury found Seabrook guilty on nine Counts of the Superseding Indictment, which are wholly unrelated to Defendant's new allegations of Jude and Duren's scheme. See Vaval, 209 Fed. App'x at 25; Bui, 70 Fed. App'x at 17. And, as explained above, there was an abundance of independent evidence supporting Defendant's conviction. Moreover, defense counsel frequently insinuated that Jude and Duren engaged in fraudulent schemes, independent of Seabrook, so the forged checks and time sheets are merely cumulative. (Tr. 1473-74, 2231-48, 2260, 2264-67.)

Accordingly, Defendant's allegations that Duren perjured himself and that Jude and Duren engaged in a separate fraudulent scheme are insufficient to support his Rule 33 Motion.

D. The Prosecution's Alleged Knowledge of Duren and Jude's Alleged Perjury

Defendant claims that the prosecution was aware of Duren and Jude's alleged perjury because officials had interviewed Carden regarding the forged checks. (Def.'s Mot. 14-15.) This meant, Defendant asserts, the prosecution knew they forged the documents and should have disclosed that evidence. (Def.'s Mot. 15-16.)

If the prosecution is aware of the perjury, a more lenient standard is used to determine whether to vacate a conviction. Vail v. Walker, No. 96 Civ. 578, 1999 WL 34818638, *1 (N.D.N.Y. Aug. 24, 1999). "Where a conviction has been obtained using 'perjured testimony and . . . the prosecution knew, or should have known, of the perjury,' the conviction must be set aside 'if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.'" Perkins v. Le Fevre, 691 F.2d 616, 619 (2d Cir. 1982) (quoting United States v. Agurs, 427 U.S. 97, 103-04 (1976)); United States v. Stewart, 433 F.3d 273, 297 (2d Cir. 2006). The Second Circuit, however, has "decline[d] to draw the contours of the phrase 'should have known.'" Drake v. Portunondo, 321 F.3d 338, 345 (2d Cir. 2003). Additionally, if it is established that the Government knowingly introduced false testimony, "reversal is 'virtually automatic.'" Stewart, 433 F.3d at 297 (quoting United States v. Stofsky, 527 F.2d 237, 243 (2d Cir. 1975)); Bourke, 2011 WL 6376711, at *7.

Seabrook's allegation is fatally deficient for several reasons. First, as explained above, Duren and Jude did not commit perjury, so the Government could not have known about it. Second, even if they perjured themselves, Defendant presented no evidence to support his assertion that the prosecution knew or should have known about the perjury. Although Defendant claims the Government was aware of their perjury because officials interviewed Carden and discovered the checks and time sheets were forged by Duren and Jude, he presents no evidence regarding such knowledge or discovery.[9] See Drake v. Portuondo, 553 F.3d 230, 241-44 (2nd Cir. 2009) (discussing evidence of the prosecution's knowledge). Nor does he provide any evidence to demonstrate his assertion that the prosecution sought to avoid disclosure of Carden's interview by not calling on her to testify. These unsupported allegations are insufficient to impute knowledge. See Stewart, 433 F.3d at 299 (upholding the finding that allegations of "red flags" did not demonstrate "the Government knew or should have known that [his] testimony was false").

Finally, even if there were such knowledge, there is no reasonable likelihood that the perjury would have affected the

[9] Defendant also provides no evidence, and indeed no specific allegations, supporting his assert that "[i]t is also wrong for a prosecutor to make an argument he knows to be factually untrue" and that the prosecution "obtain[ed] a conviction through the knowing use of false evidence." (Def.'s Mot. 13.) This claim, thereby, fails.

jury's judgment regarding Seabrook's culpability. Because Duren and Jude admitted to committing fraudulent acts, the jury was well aware that their honesty and moral turpitude was questionable, and therefore their testimony should have been examined with greater skepticism. Furthermore, because of their cooperation agreements and because they were the Defendant's accomplices, the Court explained, while charging the jury, that Duren and Jude's testimony should be more carefully scrutinized. See Stewart, 433 F.3d at 300-01 ("Exposure of the false testimony would not have added impeachment value sufficient to change the outcome of the trial."). It is highly unlikely, therefore, that those statements could have affected the jury's judgment of Seabrook's guilt, especially given the abundance of evidence proffered at trial. See id. at 299 (upholding the determination that "the jury convicted defendants of lies that had nothing to do with the [unrelated criminal] agreement" and because the statements were "collateral to the substance"); United States v. Sessa, No. 97 Civ. 2079, 2011 WL 256330, at *44 (E.D.N.Y. Jan. 25, 2011) ("Even assuming the prosecution knew that [he] testified falsely, the questions . . . were entirely immaterial to petitioner's conviction. They neither negate the elements of the crimes . . . nor diminish the abundance of evidence.").

E. Alleged Brady Violation

Defendant alleges that the prosecution's failure to turn over notes and reports from interviews with Carden was a Brady violation. He claims the Government suppressed the notes and reports, which were exculpatory material that could impeach Duren and Jude's credibility. (Def.'s Mot. at 4, 12-13.) Since Duren and Jude were the only witnesses linking Seabrook to criminal activity, Defendant argues, not disclosing the evidence violated his rights under Brady and Giglio. (Def.'s Mot. at 13.)

The government has an obligation to disclose to a defendant material evidence, including impeachment and exculpatory evidence. Brady v. Maryland, 373 U.S. 83, 87 (1963); United States v. Bagley, 473 U.S. 667, 676 (1985). Material evidence includes "information that might well alter the jury's evaluation of the credibility of a significant prosecution witness." Persico, 645 F.3d at 111. "Evidence is material, however, only 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" Id. (quoting Strickler v. Greene, 527 U.S. 263, 280 (1999)); United States v. Jackson, 345 F.3d 59, 73 (2d Cir. 2003).

Impeachment evidence of a government witness is not material if it "merely furnishes an additional basis on which to challenge a witness whose credibility has already been shown to be

questionable or is subject to extensive attack by reason of other evidence . . . [or] when, although 'possibly useful to the defense,' it is 'not likely to have changed the verdict.'" Persico, 645 F.3d at 111 (quoting Giglio, 405 U.S. at 154). Put another way, "A new trial is generally not required when the testimony of the witness is corroborated by other testimony or when the suppressed impeachment evidence merely furnishes an additional basis on which to impeach a witness whose credibility has already been shown to be questionable." Jackson, 345 F.3d at 74 (quotations and citation omitted). Because Defendant has not demonstrated that Duren and Jude committed perjury and has not demonstrated that, even if they perjured themselves, the Government was aware of it, Defendant's Brady allegation fails. See Jacob v. United States, 152 F.3d 918 (2d Cir. 1998).

Even if they did commit perjury and the prosecution was aware of it, Defendant's Brady claim fails. Defendant claims that Duren and Jude were the only witnesses who linked Seabrook to criminal activity, but, as noted above, that is not the case. Given the wealth of independent evidence produced by the prosecution, Giglio does not apply. See Giglio, 405 U.S. at 154-55 (remanding for a new trial where the Brady violation was with respect to impeachment evidence of a witness where the government's case "depended almost entirely" on that witness's testimony). Moreover, as previously discussed, the jury was well

aware of Duren and Jude's past fraudulent acts and their cooperation with the Government. Anything that could be garnered from Carden's interview notes would thereby merely be "an additional basis to challenge" their credibility. Persico, 645 F.3d at 111. Accordingly, divulging Carden's interview notes would not have changed the outcome of the trial, let alone provide a reasonable probability of a different verdict.[10]

III. Stay of Surrender and Bail Pending Appeal

In his Reply, Defendant asserts that the Court impermissibly denied his request for a stay of surrender, claiming that the Court did not "make findings of facts and law as to the salient issues." (Reply 9.)

After a judgment of conviction, a district court may review a defendant's release pending appeal. Fed. R. App. P. 9(b). "The district court must state in writing . . . the reasons for an order regarding the release or detention of a defendant." Id. The Court makes its determination in accordance with 18 U.S.C. §§ 3142, 3143, and 3145(c). Under 18 U.S.C. § 3143(b), "a person who has been found guilty . . . and sentenced . . . , and who has

[10] For the aforementioned reasons, Defendant's request for disclosure of all notes and reports of the Government's interviews with Carden is denied. Defendant's perfunctory request for the "production of all notes, reports, and memoranda of their debriefing of Duren and Jude resulting from their arrest" is also denied. (Def.'s Mot. 21.)

filed an appeal" is to be detained unless a court finds "(A) by clear and convincing evidence that the person is not likely to flee or pose a danger . . . and (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in . . . an order for a new trial." 18 U.S.C. § 3143(b) (emphasis added).

Defendant erroneously claims the Court made its determination without making any factual or legal findings. In its March 7, 2013 Order, the Court stated the applicable law for a new trial pursuant to Rule 33(b). (Mar. 7, 2013 Order, ECF No. 123, at 1.) The Court then explained why, after reviewing the facts presented to the Court and applying the law to facts, it was "highly improbable" that Defendant would succeed on the merits.[11] Id. at 2. The Court elaborated, "[B]ecause of the unlikelihood of success on the merits, Defendant's request for a stay of surrender is also denied." Id. Since Seabrook did not raise a question or law or fact that was likely to result in a mistrial, this Court properly denied his request. See United

[11] The Court explicitly applied law to the facts: "Even assuming that Tyrone Duren and Phelisha Jude did perjure themselves, a new trial is not warranted. By Defendant's own admissions, the alleged perjury was known to the Defendant as early as July 8, 2013. . . . Their alleged perjury would not be material to the verdict because there was 'overwhelming evidence supporting' Defendant's conviction. . . . And, during their testimony, both admitted to committing fraudulent acts, thereby making any omissions of additional fraudulent acts merely cumulative." (Mar. 7, 2013 Order, ECF No. 123, at 1-2.)

States v. Randell, 761 F.2d 122, 125 (2d Cir. 1985).

Although Defendant claims this Court was required to determine whether he was likely to flee or pose a danger to the community and whether the Motion was made for the purpose of delay, that is not the case. See Randell, 761 F.2d at 125 (upholding a denial of bail absent "express findings that defendant was not likely to flee or to pose a danger . . . or that the appeal was not for the purpose of delay" because the court found the appeal raised "no 'substantial' questions"). Accordingly, this Court did not err in denying Defendant's request for a stay of surrender. Moreover, for the reasons explained above, Defendant's Rule 33(b) Motion is denied. Because he does not present any question of law or fact that is likely to result in a reversal, new trial, or applicable reduced sentence, 18 U.S.C. § 3143(b)(1)(B), Defendant's application for bail pending appeal is DENIED.

IV. CONCLUSION

For the aforementioned reasons, Defendant's Motions under Rule 33(b) and 18 U.S.C. § 3143(b)(1) are DENIED.

SO ORDERED.

Dated: New York, New York
August 26, 2013

Deborah A. Batts
United States District Judge